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## **Parental Control of Broadcasting, Film, Audiovisual and On-line Services in the European Union, Country Report\***

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## **Resumo**

Este estudo dá conta dos mecanismos de regulação e de controlo da televisão, cinema, audiovisual e serviços on-line destinadas a crianças e jovens em Portugal. Fazendo parte de um estudo mais alargado sobre todos os países da União Europeia, este texto compreende o contributo português, de acordo com a estrutura proposta pela coordenação do projecto (Programme in Comparative Media Law & Policy, Oxford University Centre for Socio-Legal Studies).

# **Parental Control of Broadcasting, Film, Audiovisual and On-line Services in the European Union**

**Programme in Comparative Media Law & Policy  
Oxford University Centre for Socio-Legal Studies**

## **Portugal - Country Report**

October 1998

## **I Film Industry**

### **1. Legal system**

#### **1.1.1.**

Since the early 1920's, concerns have been expressed in Portugal about the impact of cinema on education and moral development of younger people. In fact, such concerns resulted from two distinct attitudes in pedagogic and cultural circles: on the one hand, there was a view that attributed social problems to the movies. This view sustained that public authorities should have a repressive and censorious attitude towards cinema. On the other hand, there were a view which proclaimed the advantages of cinema for educational purposes, although limiting the access to movies according to age.

These two perspectives co-existed during the Portuguese authoritarian regime (1926-1974). But, although in 1932 a Commission for Educational Cinema was set up by the Head of Government, António Salazar, the regime's actions concentrated on controlling cinema and exercising censorship over the movies. Indeed, the cultural promotion of young people was not amongst the regime priorities. The biggest concern - at least on the first decades of Salazarism, - was the fight against 'moral subversion'<sup>1</sup> and the maintenance of a rural and appeased society.

The regulation and inspection of cultural practices and, specially theatre, goes back to the first half of the 19th century<sup>2</sup>. Naturally, considerable changes have taken place according to the social and political momentum. Currently, it is up to the *Inspecção-Geral das Actividades Culturais*<sup>3</sup>, a government agency under the tutelage of the *Ministério da Cultura*, to regulate the cinema activity.

According to article 1 and article 2 of the law-decree 80/97 of the 8th of April, the *Inspecção Geral das Actividades Culturais*, is an autonomous administrative service which is supposed:

- to implement entertainment legislation,
- to verify if all agencies under the tutelage of the *Ministério da Cultura* comply with their specific regulations,
- to license performances and entertainment establishments,
- to monitor the exercise of activities such as the import, manufacture, production, edition, distribution and exportation of phonograms, as well as of edition, reproduction, distribution, sale, rent or exchange of videograms activities,
- to ensure the compliance with the legislation concerning author's rights,
- to make inquiries and investigate whenever the *Ministério da Cultura* asks in order to establish legal proceedings and apply sanctions.

The *Inspecção-Geral das Actividades Culturais* has a number of general responsibilities in this area. But the regulatory body specifically working on cinema content and ratings is the *Comissão de Classificação de Espectáculos*, which operates under the co-ordination of the *Inspecção-Geral das Actividades Culturais*. The Classification Commission has had different designations throughout the

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<sup>1</sup>This expression is used in the Law-decree 38964 of the 27th of October 1952.

<sup>2</sup>According to the introduction of the Law-decree 80/97 of the 8th of April, the State's intervention in this arena goes back to 1836 when the Queen Maria II, based on a suggestion of the reknown writer Almeida Garrett, set up the *Inspecção Geral dos Teatros*, a theater inspection agency.

<sup>3</sup>This general inspection was set up by the Law-decree 80/97 of the 8th of April.

times, reflecting different political realities. From the 1930's to the 1950's, the Commission was called *Comissão de Censura dos Espectáculos* and its staff members referred to as *censores* (censors)<sup>4</sup>. By late 1950's, when censorship was ferocious, the name - rather than the practice - of the Censorship Commission was altered to *Comissão de Exame e Classificação de Espectáculos*.

After the 1974 revolution and the subsequent revolutionary period, a more open and participated legislative setting came to the fore, though the concern with classification of movies was maintained. This new policy is clearly expressed in the Regulatory-decree 11/82 of the 5th of March which contemplated a considerable growth in the total number of members within the Classification Commission, then renamed *Comissão de Classificação de Espectáculos*. There was also an increase in the number of State departments that were called in to present their opinion. Apart from that, social scientists could express their opinion about contents, and the representatives of cinema associations were allowed to intervene on the plenary sessions of the *Comissão de Classificação de Espectáculos*. Finally, it also became legally possible for the film industry representatives, citizens groups with more than one hundred people and the Classification Commission members who voted against the Commission rating to appeal against the classification attributed to a given movie.

The current rating system was set up in 1983. Since then, the *Comissão de Classificação de Espectáculos* has already prepared a few revision proposals but politicians have not considered the issue as a priority and have preferred the *status quo*.

## 2. Rating system

In Portugal, there are two bodies rating cinema: the *Secretariado do Cinema e do Audiovisual* (SCA), close to the Catholic Church, and the *Comissão de Classificação de Espectáculos* (CCE), a government agency.

**Annexe C:** third party (non-commercial)

### **Secretariado do Cinema e do Audiovisual**

SCA's rating system may be considered as a mixture of descriptive with evaluative. On the one hand, there is a judgement over the film. This subjective judgement is expressed in terms of age category, i.e., the *Secretariado* makes a judgement concerning the age groups which are 'prepared' to assist the movie. On the other hand, the *Secretariado* also attempts to describe the film content.

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<sup>4</sup>Although in 1957, the word 'censorship' had already been replaced by the term 'exam', when referring to television, the Law-decree 41051 of the 1st of April 1957 states that in case of emergency television programmes will be classified by only one 'censor'.

This examination is expressed on a file with a descriptive and an evaluative part.

The SCA system may be considered non-deterministic because the basis of this system is the moral judgement of a rating body.

The SCA system is voluntary. It is developed by an independent Catholic entity and no one has to take its views into consideration.

## C1.

In Portugal, there is a non-commercial Catholic entity that analyses film content, the *Secretariado do Cinema e do Audiovisual* (SCA). This *Secretariado* has its headquarters in Oeiras, Lisbon, and publishes their analysis and ratings in the *Boletim Cinematográfico*.

## C2.

SCA's classifies movies according to age groups. The *Secretariado* analysis and ratings are published in the *Boletim Cinematográfico*, and frequently in newspapers with close links with the Catholic Church. The SCA classifications are also provided to distribution and exhibition houses<sup>5</sup>. Moreover, the national private television channel, set up by Catholic associations, *Television Independente* (TVI), broadcasts the ratings propounded by the *Secretariado* <sup>6</sup>

## C3

This rating entity has been operating for 40 years.

## C4

SCA provides an abstract of the film plus a moral and aesthetic comment. Occasionally, it characterises actors and performances.

The rating system includes four categories<sup>7</sup>:

'For all' - films that are entertaining and easy to understand.

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<sup>5</sup>Doing our empirical research, we could confirm that occasionally managers of cinemas thought that the SCA classification emanated from the government, not from a Catholic association.

<sup>6</sup>This information was provided by the Head of SCA, Eng. Jorge Perestrello.

<sup>7</sup>Up until mid 1980s, there were six categories. To the prevailing list, there were another two: 'for adults with serious reticence' - considered 'harmful to the large majority of the viewers' - and 'condemnable' - films that, 'for its content, constitute a serious moral attack or they defend blameworthy theories that pose severe danger to the audience'. According to the responsible for the SCA, the rating of 'condemnable' might still be used in case of pornography and in other 'really exceptional' cases.

'For adolescent and adults' - films that present a complexity that makes them hard to be understood by children, that may hurt their sensibility or distort their vision of the world.

'For adults' - films that, due to their structure or content, are not totally understood or adequately analysed by adolescents, films that contain problems which are not proper for individuals without full maturity and experience of life.

'For adults with reticences' - films that present gravely distorted situations, being its level of violence and/or degrading exploitation of matters which may hurt the viewers sensibility.

The activity of SCA can be understood as a Catholic Church evangelical action in the media field.

#### C.5

This rating system has a reduced impact at national level. However, as the SCA views are mainly conveyed by regional/local press (mainly controlled by the Catholic Church) it might eventually influence readers in terms of the movies they should or should not see.

#### C.6

It is not likely that this rating system will expand.

#### C.7

No data can be provided.

#### C.8

No, this system has been used exclusively in films.

### **Annexe D: Government**

#### **Comissão de Classificação de Espectáculos**

The official rating system adopted in Portugal is evaluative, non-deterministic and mandatory.

It is evaluative because, although it considers specific aspects of film content, the decision is taken according to the panel's opinion about the age groups which can see the movie.

It is non-deterministic because the rating is not the result of an 'objective' methodology but rather the expression of the panel's views and sensibility.

It is mandatory because no movie can be exhibited for the general public without being classified. Indeed, it is up to the *Inspecção-Geral das Actividades Culturais* to make sure that all films in exhibition are properly rated.

#### D.1

There is an official entity that proceeds to the analysis and rating of films. It is the *Comissão de Classificação de Espectáculos* which is a *Ministério da Cultura* agency.

#### D.2

The *Comissão de Classificação de Espectáculos* is regulated by the Law-decree 106-B/92 of the 1st of June. This piece of legislation attributes the Commission deliberative power in terms of age and quality rating of films. In addition to the classification of films, it is also its function to emit opinions about proposed legislation in this field. The Commission has up to 45 people, including representatives of ministries with responsibilities in the film arena, representatives of civilian associations and representatives of film industry interest groups (the latter may only express their views in the Commission plenary meetings).

The *Comissão de Classificação de Espectáculos* is organised in sections: i) age rating; ii) quality rating; iii) pornographic and non-pornographic rating. There is also an appeal sub-commission that analysis and enacts over the submitted appeals and may alter or maintain the previously attributed rating .

Every three months, there is a Commission plenary meeting. It is the plenary which approves the rating criteria to be observed in the working sections, though it is up to the *Ministério da Cultura* to rectify it.

#### D.3

The first political intervention in the entertainment arena go back to the first half of the 19th century. However, the classification of movies started in the 1930's.

#### D.4

The current age rating system goes back to 1982 and it was established by article 2, number 1 of the Law-decree 196/82 of the 21st of September.

Five categories were considered:

'for over 4 year olds'

'for over 6 year olds'

'for over 12 year olds'

'for over 16 year olds'

'for over 18 year olds'.

This Law-decree was later regulated in *Portaria* 245/83 of the 3rd of March. So, regarding the general rating criteria of films, the *Portaria* states:

'For over four year olds' - short and easy to understand movies; for this age group, movies should not provoke fear and should not collide with children's fantasies.

'For over six year olds' - films that, due to its theme and/or length, are not adequate for lower age groups .

'For over 12 year olds' - films that, due to their length or complexity, may cause excessive fatigue and/or psychological trauma to the previous age groups.

'For over 16 year olds' - films that excessively explore sexuality and physical and/or psychological violence.

'For over 18 year olds' - pornographic movies and/or films which explore pathologic forms of physical and psychological violence<sup>8</sup>.

The 'pornographic' label is attributed to a film which explores 'sexual situations and acts with the main purpose of arousing the spectator' and has a 'low aesthetic quality'. 'Soft-core' film are those which, although insistently presenting sexual acts, there is no graphic exhibition of genitalia and sexual acts are performed. 'Hard-core' movies are those with graphic presentation of genitalia and real sexual acts, not performed.

Finally, films might also get the 'quality' stamp. It happens when the film is distinguished by its artistic, thematic, pedagogic and technical aspects'.

The 'labels' we have presented so far might be applied differently. So, we will clarify how the rating/labelling process takes place<sup>9</sup>.

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<sup>8</sup>It might be interesting to note that in the Law-decree 41051 of the 1st of April 1957, films 'for adults' (over 17 year olds) were those which, although obeying to the minimal conditions required to get the authorisation from the *Comissão de Exame e Classificação de Espectáculos*, may be harmful to the spiritual education and to the moral and intellectual development of young people. Moreover, films for adults are those susceptible of dangerously exciting the youth sensibility and imagination, of awakening, and those which might suggest wrong fundamental notions about life and historic facts (article 8).



When one film is presented to the Commission in order to be classified, the president selects a panel, usually constituted by five *vogais* (elements of the jury). The panel watches the film and, considering the written criteria mentioned above, each of its members provides his/her opinion. The panel discussion is meant to reach a consensus. If a consensus is not possible, there is a simple majority vote. Yet, panel members who voted against the winning classification might appeal an to the Commission Appeal sub-commission.

Appeal are however extremely rare. Generally panels decide by consensus, although occasionally that might happen. Appeals from civilian groups and the film industry are even more scarce. Still, just recently, the film distribution company, Lusomundo, has appealed against the age rating attributed to the film 'Saving Private Ryan'. The movie was initially for 'over 16 year olds' but Lusomundo asked for a re-assessment and it came down to 'over 12 years olds'. In a statement to *Público* Newspaper, the president of *Comissão de Classificação de Espectáculos*, António Xavier, justified the move stating that the movie did not 'exploit violence', had 'high artistic and technical quality, and could even be 'pedagogic' (11 September 1998:5).

## D.5

The rating system is legally defined and therefore it has force of law in the entire national territory. The *Inspecção Geral das Actividades Culturais* is responsible for monitoring the implementation of the law. In any case, it should be said, that within 'freedom spirit' conquered after the 1974 Revolution, the rating system is, first of all, of informative nature. The general audience and educators became aware of what is adequate for different age groups and may also learn if the film is 'pornographic' or not and, eventually, they are informed about a film's 'quality'. The adopted classifications are indeed provided in the information concerning the films. Still, as it stands, the implementation of the legislative construct depends mostly from the role educators perform<sup>10</sup>.

So far, no concerned have been expressed regarding the organisational and economic capacity to manage the ratings responsibility for the volume output.

## D.6

Considering what has previously been said, the question is not relevant.

## D.7

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<sup>9</sup>The information concerned the rating/labelling process was provided by the President of the *Comissão de Classificação de Espectáculos*, Eng. António Xavier (interview, 17th of September 1998).

<sup>10</sup>Until the 1970's, there was a punitive and authoritarian view. Thus, for instance, the article 15 of the Law-decree 41051 of the 1st of April 1957 stated: 'Parents, educators or indeed anyone who allows or facilitates the access of minors to films against what is written in this Law-decree will pay a fine of 100 to 1000 Portuguese escudos, and if they repeat the action, they could be incarcerated up until three months.'

The maximum volume of programming this system can accommodate depends on the potential enlargement of the Classification Commission. This is a political decision that may solely be taken by the *Ministério da Cultura*.

At this stage, the Commission is supposed to classify all types of videograms (analogue and digital), thus including cinema, videos, video and computer games. Nevertheless, video and computer are not rated, although there is some concern about it.

## D.8

No rating system is applied to advertising.

# II Video Industry

## 1. Legal System

### 2.1.1.

In Portugal, video films are rated precisely in the same manner as films exhibited in public cinemas. The legislation and the entity which proceeds to the classification is the same (please see 1.1.1. and 1.2.). The rating of videos is also compulsory and it is up to the *Comissão de Classificação de Espectáculos* to perform the task.

If videos are copies of films which had already been in cinemas, it is automatically rated by the *Comissão de Classificação de Espectáculos*. It would not be the case, if the film is prior to the Law-decree 396/82 of the 21st of September. If the video film was not distributed in public cinemas, it is classified by the Classification Commission, as we have seen in 1.2. Video films in the commercial circuit have to have a 'official' stamp with the following information: title, record number, copy number and the classification attributed by the *Comissão de Classificação de Espectáculos*.

Specific rules regarding presentation and distribution of videos were set up in the Law-decree 39/88 of the 6th of February.

### 2.1.2.

As content is regulated in the same manner and by the same entity, please see 1.1.1.

## 2. Rating System

Once the rating system is exactly the same as in films, please see 1.2 (part concerning the *Comissão de Classificação de Espectáculos*).

### III Television

#### 1. Legal System

##### 3.1.1.

Due to the dictatorial regime (1926-1974), Portugal has a long history of press censorship. The 1933 Constitution - although guaranteeing - in principle - freedom of the press, opened the possibility of institutionalised censorship once it stated that 'special laws will regulate the exercise of press freedom (...) in order to avoid distortion of public opinion in its social function'. Indeed, this 'special law' was soon passed, establishing that all media would be under pre-censorship.

Contrary to what has happened in other European dictatorial regimes before the II world War, Oliveira Salazar - in power from 1926 up to 1968 - was more concerned with preventing opposing ideas coming to the fore than with the diffusion of a new ideology. Media control was an important instrument of 'pacification'. They were not perceived as important tools to promote values and ideas but as a mechanism to maintain order and stability.

Salazar's minister, Marcello Caetano, believed that the survival of the regime depended on its ability to modernise itself and television was seen as fundamental in the process. So, Marcello, by then secretary of state of the Presidency, created in 1953 a study group to look at the introduction of television in the country. On the 15th of December 1955, the government constituted *Rádiatelevisão Portuguesa* (RTP), the Public Service Broadcasting (PSB) company, granting RTP the exclusive concession for television broadcasting in Portugal. Regular programming would begin on the 7th of March 1997. During the first 15 years of broadcasting, RTP had only one national channel (RTP1). In 1968, a second national channel was introduced, RTP2.

Although television was set up by a more liberal faction of the Salazar regime, the same repressive mechanisms applied to television as indeed to any other medium. However, when Salazar withdrew from power, in 1968, Marcello Caetano took over and a somehow different approach towards the media was taken. At that time, it should be remembered, internal dissatisfaction with the regime was increasingly evident, liberation wars were being fought in Guinea-Bissau, Angola and Mozambique, and Portugal was being ostracised by the international community due to the authoritarian nature of the regime.

In this context, Marcello tried to convince the country that change could be introduced from inside the regime and, as a believer in the power of the media, he was keen in being on television to put his views across: he gave regular TV interviews and used TV peak time to indoctrinate the population.

In 1971, a Press Law was approved and more press freedom was expected from this document. The new law guaranteed press freedom except in the case of state of emergency and when grave subversive acts were taking place in any part of the national territory. As Portugal was at that time fighting in three fronts in the African provinces, pre-censorship, then called 'previous examination', was allowed to continue. The intensification of the colonial wars led to a hardening of the regime and a more radical right-wing faction managed to impose its views. All political content continued to be carefully scrutinised as well as fiction such as movies, series and TV shows. The repressive phase would only be over with the 1974 revolution.

After 1974, the media in general and RTP in particular, endured major convulsions. Pre-censorship was abolished whilst a ferocious confrontation for the control of RTP had just started. Although two major pieces of legislation approved after 1974 were strongly against the control of the media by any form (the 1975 Press Law and the 1976 Constitution), RTP has been under the control of successive governments. In fact, and despite the 1976 Constitution impressive display of civil liberties, no elected government was prepared to grant freedom to RTP. Being the unique broadcasting company, RTP has been perceived as crucial to electoral politics and used as a political tool.

Governments were therefore satisfied with the status quo and only when technological and ideological changes made it increasingly difficult to justify a state monopoly over broadcasting is that the breaking up of RTP's monopoly became inevitable. In 1992, following a highly controversial bidding process, the first private national TV channel, *Sociedade Independente de Comunicação* (SIC), started regular broadcasts. A second private channel, *Televisão Independente* (TVI) started broadcasting in 1993. The break-up of RTP monopoly might be seen as the most meaningful change in the television broadcasting sector since RTP regular broadcasts started in 1957.

Currently, the country has four national terrestrial television channels. These four channels use analogue technology. In July 1998, the prime minister, António Guterres, announced that digital television would be introduced in RTP by 2001. Private channels have not publicised their plans in this area.

Although RTP operated in monopoly up until 1992, throughout the 1980's the most well-off were able to buy satellite dishes and to receive dozens of foreign television channels mainly from Eutelsat and Astra satellites. But, despite the steady increase - particularly since the mid-1980's - in the number of households receiving direct satellite TV, it was not until September 1988 that the

government introduced some regulation concerning reception equipment and fiscalization (Law Decree n°317/88).

In the introductory text of this decree, the government justified its intervention stating that 'the private reception of television broadcast by satellite is a growing and entirely established reality'. In this context, the argument goes, 'it is therefore essential to regard the determinations of the International Convention of Telecommunications, essential deed of the International Telecommunications Union'. In addition, it is also expressed the need to comply with duties resulting from international agreements namely with Intelsat and Eutelsat. Once Portugal was a mere recipient of international broadcasts, content was not considered in the legislation.

Up to the 1990's, satellite television has been for political and economic elites a way of circumventing the RTP's monopoly, providing them with alternative sources of international news and entertainment. Cable television is a more recent development in the Portuguese broadcasting scene. The 1990 Television Act (law 58/90) stated that specific legislation would be needed to regulate the Cable television sub-sector. A law decree was therefore approved on the 13th of August (292/91) but only three years later did the government, based on a proposal of the Communications regulator - *Instituto da Comunicação de Portugal* - , issue licenses for companies to start operating.

In terms of content, the law decree only mentioned that operators were allowed to distribute third part transmissions 'simultaneously and entirely' so no nationally based advertising could be introduced and no other telecommunications services could be provided. This was however altered by law decree 241/97. Currently, there are no limits in terms of numbers to the attribution of licenses and companies can set up their own infrastructure if they wished to do so. Although, the first licenses were issued in early 1995, now 25 companies are licensed cable operators ([www.icp.pt](http://www.icp.pt)).

The existing cable companies are using a combination of optic fibres and co-axial cable and they have the potential to provide an array of telecommunications services such as voice telephony, data transmission, banking, tele-shopping and pay per view.

### 3.1.2.

Television broadcasting in Portugal is regulated by Law 31-A/98 of 14th of July (this law revokes Law 60/79 of 18th of September and Law 58/90 of 7th of September). Law 31-A/98 regulates both the access to the television activity and the exercise of this activity. Television broadcasting is understood as the 'transmission, codified or not, of moving images and sounds through electromagnetic waves or by any other adequate mean (space or cable) which might be received by the general public'. Close circuit video and retransmission of third part programming are not considered television broadcasting.

The very recent Law 31-A/98 opens up for the first time the possibility of local and regional TV channels as well as codified channels. It also allows the licensing of both generalist and thematic channels. According to article 8, national generalist channels are supposed to:

- to contribute to the information, education and entertainment of the public;
- to promote the right to inform and to be informed with independence, accuracy, and with no discrimination;
- to favour the development of civic habits, and to contribute to political, social and cultural pluralism;
- to promote the Portuguese language and values which express the Portuguese national identity.

Generalist regional and local channels (currently non-existent) should:

- widen regional and local programming content;
- protect and promote specific values of regions and localities; and
- provide information with particular interest to local and regional audiences.

Differently from what happened in the past, the current law sets out that it will be the *Alta Autoridade para a Comunicação Social* (High Authority for the Media) that shall attribute television licenses. The two national private channels (SIC and TVI) were licensed by the Presidency of the Council of Ministers, although the High Authority for the Media was heard on the issue.

According to the Law 31-A/98 (article 14) it is now up to the *Instituto da Comunicação Social* (ICS) to prepare the processes, and it is also up to the ICS to ask for advice on technical issues to the *Instituto das Comunicações de Portugal* (ICP). But once processes are ready, the *Instituto da Comunicação Social* should hand them over to the *Alta Autoridade para a Comunicação Social* to decide on whether the license should be granted or not. Private broadcasters (either national or not) licenses last for 15 years.

Regarding programming and information, the television law points out that freedom of expression and freedom of thought are fundamental rights. Indeed, article 20 states that the television activity is based on programming freedom, and therefore public administration, with the exception of the Courts, cannot limit or impose the broadcasting of programmes. Despite this general assumption, article 21 refers to programming limits:

1. it is not permitted any transmission which violates rights, liberties and fundamental guarantees, which constitutes a threat to human dignity or might incite crime.
2. programmes which might have a negative impact in the development of children and young people's personality or vulnerable elements of the public, namely the exhibition of violent or shocking images, should be preceded by warnings and should be transmitted with an adequate symbol, and may only be aired after 10pm.
3. If relevant in journalistic terms, violent images might, however, be broadcast in news programmes. But they have to be presented in accordance with journalistic ethical norms, and viewers should be warned about the nature of the images which the channel is about to broadcast.
4. the broadcasting of films which have been previously classified for cinema or video distribution should be preceded by a reference to the classification that it had been attributed by the official classification commission. Furthermore, when a film is classified for 16 year old or more, it should be preceded by oral warnings, should be transmitted with an adequate symbol, and may only be aired after 10pm.
5. For the present diploma, the concept of transmission includes all aspects of programming, namely advertising and programmes promotional spots.

The limits to broadcasters' programming autonomy have not been considerably altered by this new law. The television law 58/90 of the 7th of September (article 17) also prohibited pornographic or obscene programmes; programmes that might incite violence or crime or which generally violate human rights. Violent or shocking programmes were only permitted after 10pm; viewers should be advised on the programme's content and an identifying symbol should indicate viewers that the programme is not adequate for minors or vulnerable persons.

There are nevertheless differences regarding content between these two pieces of legislation. Distinctly from the 1990 television law, the current law (approved in July 1998), accepts that violent/shocking material might be broadcast before 10pm, if it is relevant in journalistic terms and if images are presented according to ethical imperatives. The second difference is related to the rating of movies according to age. The new law obliges broadcasters to inform viewers about the classification attributed to films by the official Commission. Movies which have been classified for 16 year old or more cannot pass before 10pm and oral and visual warnings are now compulsory.

The Law 31-A/98 also pays particular attention to the Public Service Broadcasting and covers programming requirements. Although the PSB

regulatory details are established in the Concession contract established between the State and RTP, the television law refers to general and specific programming obligations.

Article 44 states that the PSB should guarantee quality programming and should satisfy the audiences' needs in educational, entertainment and informative terms. In these circumstances, it should:

- a) ensure pluralism, accuracy and objectivity in information as well as independence from the government, public administration and other public powers;
- b) provide innovative and diversified programming in order to increase cultural standards, giving particular attention to young people;
- c) prioritise the production in Portuguese language, namely fiction, documentaries and animation;
- d) offer programming which expresses cultural and regional diversity and which takes into consideration the specific interests of minorities;
- e) guarantee news coverage of the main national and international events;
- f) provide regular broadcasts to Portuguese communities abroad and to Portuguese speaking countries around the world.

Article 45 covers the specific PSB obligations in terms of programming. It says that the specific PSB programming obligations are as following:

- a) to broadcast *tempo de antena* (free air time provided to the government, political parties, unions, professional associations, representatives of economic activities, consumers and environmental causes);
- b) to cede the necessary time to 'right of reply';
- c) to provide air time to religious organisations, according to their representativity;
- d) to broadcast messages from the President of the Republic, the President of the National Assembly and the Prime Minister;
- e) to gradually guarantee that hearing impaired people have the necessary means to follow programming, namely through sign language and subtitling;
- f) to cede air time to public administration in order to provide general interest information, namely health and security.



Although the Law 31-A/98 also covers cable television, there is a law decree (241/97 of the 18th of September) which specifically regulates the access and the exercise of cable television activity. Cable television licenses are attributed by the member of the government responsible for this area<sup>11</sup>, following the proposals of the *Instituto das Comunicações de Portugal* (ICS). Cable operators are now authorised to provide their own programming or third party channels, either encoded or not.

This law decree contemplates a considerable number of cable operators' obligations. In terms of contents, article 16, 2, b) says that they cannot transmit programmes which might seriously impair the physical or mental development or might negatively influence the personality of children and young people, namely due to the transmission of particularly violent ou shocking images. This would not apply if the protection of children and young people is guaranteed by the time of transmission or due to technical devices (does not specify which ones).

Violations of the television law and the cable law decree are monitored and fined by an highly intricate network of legal responsibilities shared between the *Alta Autoridade para a Comunicação Social*, the *Instituto da Comunicação Social*, the *Instituto do Consumidor* and the *Instituto das Comunicações de Portugal*. Criminal offences will be dealt with in the courts.

### 3.1.3

The systems in use are as such:

- a) 10pm watershed; before 10 pm programmes unsuitable for children or psychologically vulnerable people should not be broadcast.
- b) acoustic warnings; previous to the presentation of violent films, series or documentaries, broadcasters are supposed (and often do) to inform viewers that the following programme includes images they might consider shocking; furthermore, during news bulletins, the presenter should also inform viewers about the nature of the images they are about to broadcast, if there is an understanding that they are violent or shocking.
- c) symbol ('0') in the upper right corner of the screen while a violent/shocking programme is on the air,
- d) age ratings, the broadcaster has to tell viewers how the movie was classified for cinema distribution.

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<sup>11</sup>Whilst the media is under the tutelage of the Presidency of the Council of Ministers, cable and telecommunications are under the tutelage of the Ministry of Planning, Transports and Communications.

### 3.1.4.

It was under Cavaco Silva governments (1985-1995) that the media underwent major reforms. Given the nature of political, economic and technological developments in the mid-1980's, changes in the national media policy were bound to be introduced. At a regional level, the European Union was developing its policies for telecommunications and television broadcasting; conservative governments in the UK, Germany and France (not to mention the US) persuasively argued for liberalisation of markets and privatisation of state property; and important technological advances - mainly the development of satellite and optic fibre and the subsequent convergence of distribution technologies - had enormous implications. The proliferation of European satellite TV channels, for instance, started being used as an argument against the national RTP monopoly. RTP's critics argued that, once one could receive international private TV channels, there was no reason why one should not have national private channels.

At a national level, important changes were also taking place. Up to the mid-1980's, the political instability in the country was so acute that any comprehensive set of political decisions was hard, if not impossible, to implement. In 1987, one year after Portugal joined the EEC, the first majority government was elected since the 1974 revolution. At that time, the country's economy was booming that being the main reason for a substantial rise in advertising revenue which had increased, in total, from around £52 million in 1986 to around £400 million in 1994<sup>12</sup>. In this economic context, relatively unconstrained newspapers such as *O Independente* and *Público* were set up and their existence seriously impaired the government's ability to suppress politically damaging material. In addition, the climate of opinion was turning against the concentration of the media in the state's hands. The Cavaco Silva's government itself believed that if Portugal was to be seen as a truly European partner, changes in the economy, and consequently in the media market, had to be introduced. A pro-business approach was taken and the liberalisation of the media market and privatisation of a substantial share of state media was imminent.

In this context, the two Cavaco Silva's majority governments<sup>13</sup> undertook the most comprehensive changes in the media since 1974-75. Although the governmental programmes were vague and did not clearly set out the government's objectives for the sector, these were the main lines of action:

- the radio sector was liberalised and one national public radio was privatised

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<sup>12</sup>These figures were estimated, utilising data from Sabatina and the opinion of several experts in the field.

<sup>13</sup>The first majority government since 1974 ran the country between 1987 to 1991; the second majority government was in power from 1991 to 1995 (these were the XI and XII Constitutional governments, respectively).

- the nationalised press returned to the private sector (due to the 1975 nationalisation process, most media were in the state's hands)
- a television act was approved and as a result two TV channels were granted to private operators
- international broadcasts for Portuguese communities and Portuguese speaking countries were developed.

In fact, the first set of measures directly related to the structure of the media concerned the re-organisation of the radio broadcasting sector. By mid-1980's there were so many illegal radio stations operating that the government could no longer ignore that reality. Nevertheless, it was only in 1989 that 310 local frequencies were allocated. In the following year, two regional frequencies were attributed: one went to *Rádio Press*, part of the Lusomundo group and the other to *Correia da Manhã Rádio* which belonged to the Carlos Barbosa group. As early as 1976 there were calls for the legalisation of local and regional radio stations but no government was keen in doing so.

In 1991, the two most important state owned newspapers were privatised. The government had been following a wide privatisation programme and there were no grounds to justify the maintenance of *Jornal de Notícias* and *Diário de Notícias* under state control. The government was in a dilemma between the perceived need to control those newspapers and the ideological and political belief in privatisation. In a controversial process, both were bought by *Lusomundo*, one of the most important multi-media groups in Portugal, perceived - at the time - as having close links with the government.

The opening up of TV channels to private ownership has been on the political agenda throughout the 1980's. Many groups have shown interest but only three have bid for the two TV channels which would be set up to add to the existing ones: RTP1 and RTP2. One channel was granted to the Catholic Church (which has recently lost control over the station); the other went to the former prime minister, Pinto Balsemão, who is an historic member of the Social Democrat Party.

The current socialist government, led by António Guterres (1995-1999) has not introduced any major reform in the structure of the media system. As the system underwent major changes in the previous government, António Guterres and the *Secretário de Estado para a Comunicação Social*, Alberto Arons de Carvalho, are indeed trying to improve the existing media system, not attempting to introduce any substantial change.

Up to now, the current government has complied with a number of political objectives established in its programme. A new public service contract was signed between RTP and the State, there has been a considerable investment in RTP's international broadcasts, the composition of the *Alta Autoridade para a Comunicação Social* has been altered, and new Press and Television Laws were

approved. Still it might be argued that the current government is not actually developing new policies but trying to regulate and to develop mechanisms which make the implementation of the law possible.

Regarding specifically new legislative proposals, there has been no recent announcements. Still, although the Television law is indeed very recent, terrestrial and cable television are emergent business areas. So, it is very likely that the government and the parliament will react to new demands of from businesses and the public.

Digital television is not yet a reality. On the 3rd of August 1998, the prime minister has announced the introduction of terrestrial digital television 'as soon as possible' (press release, [www.secs.pt](http://www.secs.pt)). Up until the 3rd of October 1998, the *Instituto da Comunicação Social* and the *Instituto das Comunicações Portugal* are co-ordinating a public consultation process on the introduction of digital television in the country ([www.icp.pt/actual/](http://www.icp.pt/actual/) and [www.secs.pt](http://www.secs.pt)).

### 3.2. Rating System

#### 3.2.1.

As we have seen in 3.1.1, Portugal has a long history of pre-censorship in broadcasting. Up until the 1974 revolution, RTP had 'in house' censors who decided what could and what could not be broadcast. During this period of time, there was no point in acoustic or visual warnings about content.

Right after the revolution, in 1974, there was a dramatic change in broadcasting content. A great variety of so-called 'progressive' material was broadcast. The programming of more risky material implied the introduction of warning mechanisms. Indeed, immediately after the revolution, particularly films (but also series and documentaries) seen as violent, shocking or pornographic went on air with the '0' visual symbol and - before their exhibition - presenters did warn viewers about the nature of their content. There was also an understanding that 'daring' material could be broadcast late at night with a permanent visual symbol.

Decisions concerning acoustic and visual warnings as well as programming time were based on the judgement of the RTP programming directions. Being RTP the sole broadcasting operator, there were no written rules or instructions. Even the 'official' cinema classification did not necessarily imply the introduction of warnings. It operated as an indication but the last say concerning programming and warnings was the RTP's responsibility. Each RTP programming direction prepared schedules according to its sensibility and experience. Successive democratic governments were concerned with political output but great latitude was given to programmers in terms of fictional content.

#### 3.2.2.

Once RTP has been the sole operator until 1992 and because it has operated under government's close scrutiny (even today it is under the tutelage of the Presidency of the Council of Ministers), there was no need of detailed 'external' rules or legislation regarding content. Although there was a general legal framework, in terms of broadcasting output, RTP was a self-regulatory body.

Still, the first Television Act (Law 58/90), article 17 deals with forbidden programmes. It states that pornographic and obscene programmes are not allowed. It is also forbidden to broadcast programmes which may encourage violence, crimes, or which generally violate the fundamental rights, freedoms and civil rights provided by the Portuguese Constitution. Under the same article, any programme that might shock sensitive individuals and minors must be broadcast after 10pm. All violent/shocking content must be accompanied by verbal warnings and a '0' symbol. The current television law (31-A/98 which revokes law 58/90) does not introduce import changes at this level (see 3.1.2. and 3.1.3).

No law or regulation has so far attempted to define concepts such as violence, shocking, obscene or pornographic, and no regulatory body (e.g. *Alta Autoridade para a Comunicação Social, Direcção Geral da Comunicação Social* - later *Instituto da Comunicação Social*) has had the will and the resources to enforce the legislation. Operators knew they could develop their programming strategies with no constraints. Particularly after private operators entered the market, all broadcasting companies fiercely fought for audiences and, in these circumstances, the overall television output became far more violent and shocking.

Having no means to diminish the levels of violent material in the broadcasting system, the *Alta Autoridade para a Comunicação Social* decided to promote an agreement between the three operators about the representation of violence on television.

The agreement, signed in on the 9th of July 1997, says that considering its social role, Constitutional and legal obligations, television operators decided to take the following measures concerning the representation of violence:

1. in order to allow the public to make conscientious options, operators should identify with a common symbol programmes which are not advisable to sensitive elements of the public.
2. (...) operators shall inform viewers about the common symbol in the press releases they provide to the television magazines as well as in the programmes/presentations about forthcoming content.
3. (...) operators shall prepare two promotional spots for violent series or films. One with no violent images to promote the film or series before 10pm and another one with material acceptable for the after

10pm period. Both spots should include the symbol identifying its characteristics.

4. operators declare they will pay particular attention to the information they promote, on the air or by other means, about programmes for children and young people in order to help parents and educators to adequately follow these programmes.

Setting aside fiction and entertainment, the agreement looks at information. At this level, operators state that the journalistic representation of violence will follow ethical rules and will not explore pain, morbid feelings or sensationalism.

### **3.2.3.**

The presence of a visual symbol throughout the duration of a programme is a established reality and there is no expressed resistance to it.

### **3.2.4.**

It is understandable that viewers would prefer to have more information about content rather than less. We cannot predict resistance towards additional visual indication of ratings.

## **3. Technical Devices**

### **3.3.1.**

There are no technical devices to assist in parental control of television broadcasting.

### **3.3.2.**

Considering what was said in point 3.3.1., no technical specifications can be given.

### **3.3.3.**

Considering what was said in point 3.3.1., no costs can be identified.

### **3.3.4.**

Considering what was said in point 3.3.1, the effectiveness cannot be assessed. In terms of the technical devices which would be best suited for the country, one can only say that no experience exists in Portugal at this level. Therefore, the suitability and efficiency of technical devices may not be predicted.

## **11. Introduction of Scenarios for Technical Devices**

### **3.4.1.**

According to a government official within the *Secretaria de Estado para a Comunicação Social*,<sup>14</sup> the introduction of technical devices has not been seriously considered. The *Secretaria de Estado* is said to be aware of the on going debate about V-chip but there is a perception that this might not be the most adequate measure to protect minors from harmful content. Therefore, regarding technical scenarios, nothing is on the agenda.

The implementation of the new Television Law is supposed to be the main concern of the *Secretaria de Estado* at this stage.

### 3.4.2.

No scenarios have been developed.

### 3.4.3.

The development and consequences of new technical devices are unpredictable.

## 12. Alternatives and/or complements to technologies

### 3.5.1.

At government level, no initiatives to assist parental control in media use were taken.

However, some relevant initiatives were taken by other national actors.

The *Público* newspaper has developed the *Publico na Escola* project. *Publico na Escola* is in itself a newspaper and a project to introduce media studies in primary schools and high schools. Amongst its numerous activities, *Publico na Escola* project prepares material for educators (working sheets, books, videos, etc.), it develops workshops about the children and the media, it organises school newspaper contests, among other activities.

Apart from this newspaper, some universities - such as the *Instituto de Estudos da Criança* (Universidade do Minho) and the *Escola Superior de Educação de Setúbal* - have also taken some measures which might have an impact in terms of awareness raising. These schools offer courses and programmes specifically dealing with Media Education.

As media is a strong topic in the media, parents can also get information in magazines, newspapers, television, etc., concerning harmful content.

### 3.5.2.

The initiatives we mentioned in point 3.5.1. have no immediate 'measurable' results but might be significant in the medium term.

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<sup>14</sup>Interview with João Pedro Figueiredo, 23 September 1998.

### 3.5.3.

'Educational' measures cannot have short term objectives and are difficult - if not at all impossible - to access.

## IV On-line Services

### 1. Legal System

#### 4.1.1.

As on-line services are a relatively recent reality, no specific content legislation has yet been developed. However, this does not necessary mean that no legal means exist to punish crimes committed on electronic services. Indeed the Constitution, the Penal Law and the Civil Law contemplate a great number of issues which are relevant to on-line material and this legislation might be used to prosecute 'on-line' crimes.

The Constitution pays considerable attention to the media and to the Human Rights and Human Dignity. Article 25 guarantees the moral integrity of all citizens and article 26 guarantees the right to the development of one's personality, to good name and reputation, to privacy and intimacy, among others.

The Penal Law covers in greater detail a number of crimes against Honour (from article 180 to 189), crimes against the Preservation of Privacy (from article 192 to 198), crimes against Judicial Personal Possessions, such as illicit pictures and tapes (article 199), crimes against Peace and Humanity (article 236 and 240), crimes against life in society (article 251 and 252), crimes against public order (297 and 298), among others. The Civil Law, namely from article 70 to article 81, also contemplates a number of rights (e.g. good name, image, privacy, etc.).

Although there is no specific regulation for on-line services, there is a legal base to act if crimes are committed. If crimes are directly linked with individuals (such as injury, defamation, etc.), the individuals themselves have to press charges. If crimes are committed against humanity (e.g. incitement to commit crime, racist behaviour, pornography, pedophilic content), the State prosecutor might take the case to court.

The existing legal potential has never been used to press charges against 'on-line' crimes. When recently the National Crime Squad (London) co-ordinated an international operation against pedophilic content in the Internet, three Portuguese were reported as suspects (*Público*, 3 September 1998) but no charges were pressed by the national authorities.



Apart from these legal documents (Constitution, Penal Law and Civil Law) which eventual could be used to punish criminal content, two laws regarding a different nature of computing crimes were passed: law 10/91 and law 109/91.

Law 10/91 deals with computerised personal data bases<sup>15</sup>. Basically it regulates the collection and usage of personal data by the state, banks, hospitals, etc. It is up to the *Comissão Nacional de Protecção de Dados Pessoais Informatizados* (National Commission to protect electronic personal data) to implement this law. According to article 8, point 1,g, this commission might in some circumstances ask the judicial authorities to destroy data, and it is its responsibility to inform the state's prosecutor about crimes related to personal data (article 8, point 1,j).

Law 109/91 covers 'computing crimes' such as the unauthorised damage or destruction of electronic data or programmes, electronic sabotage, illegitimate access and reproduction of to content, etc. It is up to individuals or the state's prosecutor to press charges.

#### 4.1.2.

The Constitution, the Penal Law and the Civil Law can be understood as being applicable to all on-line services (although they have never been used for that purpose).

#### 4.1.3.

No systems of content control (e.g. ratings, bans, watersheds, etc.) are in use. Eventually, some Internet users might be using blocking systems such as the Platform for Internet Content Selection (PICS). No pools or studies were done about the number of Internet users who might use these systems. Still, amongst the dozens of informal enquires we made to Internet users in the academia, no one was aware of PICS or indeed any other system to control content in the Internet.

#### 4.1.4.

Currently, there are no proposals for change. Although there has been some reporting about pornography in the Internet, no serious attention has been given to the issue.

## 2. Rating System

No national group or entity is responsible for the rating system for this medium.

## 3. Technical Devices

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<sup>15</sup>The National Assembly is currently preparing a new law concerning personal data protection. This law will basically reproduce the 95/46/EC directive.

**4.3.1.** No technical devices are in use.

**4.3.2.** No technical devices are in use. Therefore, no technical specifications can be given.

**4.3.3.** No data may be provided.

**4.3.4.** No data may be provided.

**4.3.5.** Considering 4.3.1., no assessment can be made.

## **4. Introduction Scenarios for Technical Devices**

### **4.4.1.**

The Internet and other on-line services are far from being a widespread reality in Portugal. No accurate data exists but it is believed that its implementation is more relevant in the education sector (amongst academics and students) and in the service sector (i.e., banking, insurance, advertising and travel agencies). So far, these sectors have not expressed the need to have mechanisms of control. Most current users of on-line services are professional adults and as such there is an understanding that control mechanisms are pointless.

However, as on-line services in general and the Internet in particular become more widespread and as more children have access to on-line services and products, the situation might change. The *Ministério da Ciência e da Tecnologia* (Science Ministry), for instance, has the political objective of introducing the Internet in every school of the country (including primary education and high school). As the programme is implemented, it is possible that parents and educators will get worried about the type of material children have access to in school. At this stage, there is still a great hype about the Internet's benefits and no assessment about its potential negative effects has been on the agenda.

Regarding the EU legislative/regulatory developments, there is no tradition of resistance. The transposition of EU directives and regulations has been done with relative ease. But, as much legislation is indeed enacted in advance of social need, it turns out to be dead letter. There is, in fact, a considerable gap between the law and social reality.

### **4.4.2.**

As technical devices are non-existing, no costs can be anticipated.

### **4.4.3.**

The development of new technical devices is unpredictable.

## **5. Alternatives to Technologies**

### **4.5.1.**

At this time, educational and awareness-raising measures to assist parental control in use of on-line services are simply non-existent. Politicians have not given any attention to the issue. Due to the Portuguese long history of censorship, control of content is a highly sensitive matter. So, politicians do not want to be seen as responsible for the introduction of control mechanisms which in turn might be perceived as new forms of censorship. The political discourses on the media are still very much centred on freedom of expression.

#### 4.5.2.

Aid is non-existent.

#### 4.5.3.

Considering 4.5.1. and 4.5.2., the question is not relevant.

## **V Prospects for Horizontal Treatment of the protection of Minors Across Media**

### 5.1.

Although cinema, video, television and on-line services can be understood as mass media, they have been perceived very differently by politicians and by the public in general. Cinema has traditionally been in the 'cultural' sphere. Indeed, the Classification Commission, as we saw in point I of the Template, is under the tutelage of the *Ministério da Cultura*. Video is seen as a cinema sub-product and therefore it receives the same treatment as cinema in terms of ratings and classification.

Television has been directly related with electoral politics and as such the *Secretaria de Estado para a Comunicação Social* reports directly to the President of the Council of Ministers, the prime minister António Guterres. The *Secretaria de Estado* develops policy but it is up to various regulatory bodies to implement it. The *Alta Autoridade para a Comunicação Social*, the *Instituto da Comunicação Social*, the *Instituto do Consumidor* and the *Instituto Português das Comunicações* share responsibilities in this arena. The highly intricate network of inter-related attributions ends up dissolving the responsibilities of these bodies and their accountability. In terms of television content and protection of minors, power is fragmented amongst bodies thus promoting inefficiency and uncertainty over the role each of them is supposed to perform. Differently from cinema and television, on-line services are a recent development and no specific legislation has been developed about on-line content. So far, apart from general law, only the *Comissão Nacional para a Protecção de Dados Pessoais Informatizados* has some responsibilities in this area.

From our empirical research for this project, it was possible to assess that staff in the regulatory bodies were themselves ill-informed about their responsibilities and, even when eventually they were not, they did recognise the gap between the law and its implementation. At the *Instituto da Comunicação Social* (which has the legal responsibility to monitor the implementation of the Television Law), for example, were told that it has not paid particular attention to violence in television, although sometimes the *Alta Autoridade* (which has the legal responsibility of ensure the observance of the generic and specific aims of the television activity) is alerted by the *Instituto* on the issue. According to António Penedo, member of the Television Sector of the *Instituto*, it is up to them 'to monitor television content but not to implement the law' (interview: 1 September 1998).

Legal difficulties were also expressed by the *Comissão Nacional para a Protecção de Dados Pessoais Informatizados*. Taking into consideration the current legal status of the *Comissão*, there is a clear uncertainty about how far it can go in terms of control of content and minors protection. The Commission legal expert, Maria José Barbosa, explained us that once their work merely involves the protection of personal data, they could only intervene in content related to minors if the child is identified: 'if, for example, we are aware of pedophilic content but we do not know the identity of those involved, it is not up to us to act' (interview: 21 September 1998).

As we see it, the present system is the result of the Portuguese historical developments and its inherent highly bureaucratic administrative system. As it stands, the media regulatory system does not take into consideration the recent developments in media integration. Despite the technological convergence and despite the economic and social relation between production (content) and distribution (medium), there is a lack of co-ordination between broadcasting (terrestrial, cable and satellite television), 'cultural' fields (cinema and video), and distribution technologies (telecommunications).

The protection of minors across media, would in any case require a great deal of co-ordination and expertise which is non-existent at the time. Once there is no co-ordinated vision, the political output is a mere set of ad hoc decisions, mainly reacting to technological developments and to internal and external pressures. Each of the several public bodies/individuals involved in carrying out policies and regulation basically respond - if at all - to the most pressing needs or criticisms.

In fact, the protection of minors across media demands for i) a unit/structure which would co-ordinate the control of content across media within the existing legal system, i.e., it would develop co-operation amongst the different regulatory bodies or ii) the setting up of a single structure to deal specifically with content across media.

Although these possibilities should be considered, they will be hard to implement. On the one hand, the setting up of a body/unit to co-ordinate existing bodies which have a say in terms of content would face resistance from the existing bodies. They would probably argue that if they are not doing more is because they do not have the resources or the legal means. On the other hand, the setting up of a single structure to specifically address content across media would imply a reduction of existing regulatory bodies' attributions. This would not only face resistance from the bodies themselves but it would also be difficult because legal changes regarding the attributions of regulatory bodies would have to be introduced. Both possibilities could be interpreted as the adding of yet another layer to the already complex media regulation structure.

Apart from that, in Portugal any political move concerning content is highly sensitive. Either technical devices or content regulation are seen with suspicion by operators and the public.

In a study sponsored by the *Alta Autoridade para a Comunicação Social* (1994) about violence in the media, the research team has demonstrated that most people knew little or nothing about the existing regulatory bodies. Indeed, the existing bodies have no public visibility. When asked specifically about the representation of violence in the media, adults favoured preventive action which would include the education of professionals and the transmission of critical opinions by regulatory bodies. The prohibition of certain contents was not accepted because it was perceived as a new form of censorship. Amongst the young people, however, there was an understanding that a regulatory body should have the power to prohibit certain contents as far as it is consensual and justified (*Alta Autoridade para a Comunicação Social*, 1994: 80-81).

Operators in general also dislike the intervention of regulatory bodies in their programming strategies. Following criticisms about poor quality programming, namely high levels of violence, infringement to human dignity and the systematic exploitation of human emotions, the Portuguese private channel SIC (with the highest audience share) has been arguing that the government intends to institute a new censorship regime. In a long interview to *Expresso* newspaper (09.09.97: 32-41), the Information and Programming Director of the TV station, Emídio Rangel, has argued that violence on television is a *falsa questão*, that is, a meaningless issue. 'What I do want to say, with the utmost seriousness and utmost rigour, is that I detect signs in Portuguese society that converge to the re-establishment of the censorship regime (...). I have to publicly state my concern and I have to call people's attention to clear signs that (the government) wants to intervene in television content. This is censorship' (*Expresso*, 9 September 1997: 37).

Considering the Portuguese authoritarian past, this sort of accusations are very uncomfortable for unprepared politicians. In any case, it might be said that as national politicians do not like overt intervention in issues concerning media content, the development of EU policies and the sharing of experiences and

programmes might improve politicians' expertise to intervene in the protection of minors across media.

## **VI Article 22**

### **6.1.**

This government considers that the recent Television Law (31-A/98 of 14th of July) is in itself a transposition of the Television without Frontiers Directive. As we have seen in 3.1.2., this piece of legislation contemplated the protection of minors from harmful content. But, as we have also refereed in 5.1., there is a considerable difference between legislating and implementing the law.

### **6.2.**

Content in Television broadcasting is contemplated in Law 31-A/98 (Please see 3.1.2.). As this is a very recent piece of legislation, no more legal documents or measures concerning content were developed since the law was passed in the 14th of July 1998.

### **6.3.**

'Watersheds' are considered in Law 31-A/98. As we saw in 3.1.2. and 3.1.3., the system in use is the 10pm watershed; before 10 pm programmes unsuitable for children or psychologically vulnerable people should not be broadcast.

### **6.4.**

The Law 31-A/98 is seen as the transposition of the Directive Television Without Frontiers. Therefore, the Government believes that it has taken the necessary steps to implement the Directive.

### **6.5.**

No, Portugal has no 'more detailed or stricter rules' concerning content harmful to minors.

### **6.6.**

There is no specific legislation regarding illegal or harmful content on on-line services. However, as we saw in 4.1.1., the Constitutional Law, the Penal Law and the Civil Law might eventually be used to press charges against crimes committed on on-line services.

## VII Parental Obligations, Children's Rights, Rules and Norms

### 7.1.

In Portugal, there is no specific Family Law. Despite the mid-1970's political and social changes, the most important pieces of legislation in this area are the 1966 Civil Code and the Constitution.

The Constitution states that parents have the right and the duty of educating their children (article 36,5) but it adds that the State should co-operate with parents in the educational task (article 67,2c). The Constitution legally protects children from a number of potential problems and difficulties: children have the right to be protected by society and by the State against all types of abandonment, discrimination and oppression, and against the abusive exercise of authority from family and other institutions (article 69)<sup>16</sup>.

According to the Constitution, through the education system, the State wants to promote values such as equal opportunities; reduction of social, cultural and economic asymmetries; tolerance and mutual understanding, solidarity and responsibility for social progress and active participation in collective life (article 73.2).

The 1966 Civil Code, updated in 1977 through the Law-decree 496/77 of the 25th of November, refers in article 1878 that it is up to parents to ensure children's health and security, to support the family, to manage children's education, to represent them, and to administer their belongings.

Reflecting new post-revolution perspectives, the Law-decree 496/77 adds that, although children should obey their parents, parents should - taking into account children's maturity - consider children's opinions and should recognise their autonomy in the organisation of their own lives.

Values expressed in both the Constitution and the Civil Code coincide with family values highlighted in recent studies. The European Value Systems Study Group, for example, has demonstrated that, in Portugal, family is fundamental in the life of young adults (18 years old or plus) and that the level of satisfaction with family life is extremely high (França, 1993). This does not mean however that, in some family matters Portugal has not followed the European trend. Indeed, there has been a considerable decline in birth-rate, divorce rate is on the increase and women are progressively entering into the market place. The main differences from other European countries are as following: most Portuguese have Catholic marriages and the level of birth-rate outside marriages is very

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<sup>16</sup>Although the protection of children is extremely important, the current debate about child policies underlines three dimensions: protection, provision and participation.

low, suggesting that co-habitation is not very significant (Almeida and Wall, 1995: 31-53).

The impact of social change over the last decades in children's lives has not been assessed. In any case, it might be argued that if couples have less children, it might mean that children can benefit from additional attention and better economic conditions. Still, it is also likely that children will become more isolated and more dependent on nursery care or other type of institutionalised care.

Though Portugal was one of the first countries to sign the Children's Rights Convention, approved by the United Nations General Assembly in 1989, Children's rights are not particularly high on the political agenda and public concern with the issue is not very relevant. Obviously, some progress has been made in recent years, but Children's rights are still an issue concerning a small minority.

From our analysis of the current legislation about children, the 'protectionist' view clearly stands out. The notion that children should be protected by parents and by the State is very clear in both the Constitution and the Civil Code. However, children's views and participation in the decision-making process concerning issues relevant to them are not seriously considered in these legal documents. Children are still regarded as the 'recipient' of State's measures and society's initiatives. They are perceived as 'human becomings not as human beings' (Manel, tens esta referência?).

## 7.2.

Most public concern about children and the media focus on television and video films. Video games and on-line products or services have not caused any relevant debate or worries. In terms of content, the issues which cause most concern are: the representation of sexuality, the representation of violence and the 'consumption ideology', mainly expressed in television advertising<sup>17</sup>.

Over the last decade, in Portugal, there has been cyclic civic and political movements demanding a more adequate representation of sex and violence. These opinion movements generally make themselves heard immediately after news - mainly from other countries - of serious crimes committed by children (e.g. the James Bulger case). Crimes committed by children are particularly distressing and, when in the public arena, they unleash debates and public reprehension and condemnation of media performance.

Still, in Portugal, the shock waves caused by children's crimes have had few effective results. So far, the measures taken in the aftermath of 'foreign' children crimes' were the 1997 protocol established between the three terrestrial television operators in order to improve the representation of violence and the

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<sup>17</sup>Interestingly enough, bad language has never been an issue.



information about violent content (please see 3.2.2.), and the government sponsoring of an academic study to the *Instituto Superior das Ciências do Trabalho e da Empresa* about violence on television, whose results are not public yet.

In 1994, there has already been another political intervention concerning the representation of violence. The Government Media Tutelage set up a Commission with representatives of civil society whose main purpose was to reflect and to put forward measures concerning the protection of minors. This Commission produced an unpublished text '*Violência na Televisão: Reflexões e Propostas*: 9 February 1995) which argued that the State should incentive academic research about the effects of violence and that Media Education should be introduced in Schools' curricula.

Despite the occasional political intervention in this arena, there is no empirical evidence to justify public concern with children's crimes supposedly resulting from media consumption patterns<sup>18</sup>. As we have pointed out elsewhere, these reactions and controversies are at the core of a trend (replicated and amplified by the media) which essentially puts the blame for children's and juvenile crime and unsociable behaviour at the door of media in general and television in particular (Pinto: 1995). This view is based on the belief that media images have a modelling power, despite the social contexts of 'reception'.

In terms of conclusion, we would say that when violence issues are considered, the concepts of violence and pornography are taken at face value. Most overt concerns refer to physical violence or repetitive violent scenes. Little concern is expressed about psychological, social or moral violence. Pornography, as the *Comissão de Classificação de Espectáculos* so bluntly puts it, is basically regarded as the graphic representation of genitalia and sexual acts with the main purpose of arousing the spectator. Indeed, all these concepts are poorly elaborated and used in a very simplistic manner.

## VIII Review of Existing Studies

### 8.1.

We are not aware of any national study concerning sub-point a., b., and c.

### 8.2.

We are not aware of any national study concerning the effects of pornography on children.

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<sup>18</sup>According to data from the Gabinete de Estudos e Planeamento do Ministério da Justiça, quoted by *Público* (1 November 1994), the level of juvenile delinquency has decrease 30% between 1988 to 1993.

Regarding media effects, we can highlight the following studies/initiatives:

Alta Autoridade para a Comunicação Social (1995) *A Violência nos Meios de Comunicação Social, Colóquio Internacional*. (International Conference) Lisboa: AACS.

Mesquita, Maria Júlia (1991) *O Impacto da Televiolência no Processo Socialização da Criança - O Exemplo da Guerra do Golfo*. Dissertação de Mestrado em Psicologia do Desenvolvimento (MA Thesis). Porto: Faculdade de Psicologia e Ciências da Educação.

Monteiro, Maria Benedicta (1984) *La Construction Sociale de la Violence - Approche Cognitive et Développmentale*. These présenté en vue de l'obtention du grade de Docteur en Psychologie (Ph.D. thesis) Université Catholique de Louvain, Faculté de Psychologie et des Sciences de L'Éducation.

Paixão, Rui (1995, 1 de Novembro) 'Que Alternativas Oferecemos à Televisão?' In *Público*.

In 1993, the *Alta Autoridade para a Comunicação Social* sponsored a study named '*A Violência nos Meios de Comunicação Social*' (Violence in the Media)<sup>19</sup>. The results of this study were debated in an International Conference that took place in October 1993<sup>20</sup>.

The main conclusions of this study are as following:

- The majority of interviewees considered that levels of violence on television have increased in recent years and stated that they would like to see operators paying more attention to the issue.
- Generally, interviewees associated violence with war, crimes, drugs, and starvation.
- Specifically dealing with TV violence, the majority of interviewees understood that television operators should broadcast 'violence', as long as it is not presented in a sensationalist manner and if attention is paid to issues such as broadcasting timing and warnings (Alta Autoridade para a Comunicação Social, 1995: 60)
- Amongst parents interviewed for this study, 27% said they never exercised any form of control over the material (audiovisual and written) their children used; 29% stated that they always controlled the material their children used

<sup>19</sup> This study was developed by CEMASE. The empirical research comprehended twelve discussion groups plus a opinion poll (sample: 3.300 individuals over 15).

<sup>20</sup> The book *A Violência nos Meios de Comunicação Social* (Lisbon: AACS, 1995) was subsequently published.

and 45% said that they supervised and tried to incentivate children to consume material understood as adequate for their age group. TV news, sex and physical violence are the issues parents are most concerned with.

An interesting aspect of this study is the emphasis parents put in television news. A element of one Conference panel considered that the results of the enquire suggest that people are most worried with 'real' violence rather than 'fictional' violence.

We will now, very briefly, present some conclusions of other national studies concerning violence.

António Couto Soares (1984), in his study about heroes amongst pre-adolescents has noticed considerable differences between boys and girls. Firstly, there is a difference in terms of gender; secondly, there is a difference in terms of socio-psychological characteristics of these heroes. Similar conclusions were reached by Pinto (1995), in a study about 8 to 11 years old children. In both studies, boys' heroes were physically strong figures whilst girls heroes tended to be particularly good looking individuals.

In 1984, Benedita Monteiro defended a Ph.D. thesis in Lovain University (Belgium) entitled 'The Social Construction of Violence'. Monteiro attempted to analyse the effects of recorded violence on pre-adolescents' behaviour and social representation. The author has concluded that the consume of violent videos has some influence on pre-adolescents. This influence is noticeable in pre-adolescents' fear of victimisation and on their aggressive response to colleagues provocation. Monteiro says that probably pre-adolescents proceed to a cognitive elaboration of their mental state according to these symbols which might in turn provoke an aggressive reaction (1984:329).

### 8.3.

Almeida, Ana Nunes and Karin Wall (1995) 'A Família' in *Portugal Hoje*, Oeiras, Instituto Nacional de Administração.

Brederode Santos, M. Emília (1991) *Aprender com a Televisão - O Segredo da Rua Sésamo*. Lisbon: TV Guia Editora.

Conselho Nacional da Educação (1994) *A Educação e os Meios de Comunicação*, Actas do Seminário, 2 -3 December 1993, Lisbon: CNE.

Fonseca, Teresa (1996) *A Televisão e a Multiculturalidade: Apropriação das Mensagens Televisivas por Crianças de Diferentes Etnias*. Tese de Mestrado (MA thesis), Lisbon: ISCTE.

Pereda, M. Visitación (1997) *Audiovisualización, Escuela y Tiempo Libre: la Recepción Televisiva del Preadolescente, un proceso de Mediación Múltiple*. Tese de

doutoramento em fase de finalização (unfinished Ph.D. thesis), Faculdade de Psicologia e Ciências da Educação, Universidade do Porto

Pereira, Sara (1993) *A Televisão no Jardim de Infância - Práticas e Atitudes dos Educadores da Rede Pública do Distrito de Braga e Contributos para o Uso Criterioso da Televisão*. Braga: CEFOPE, Universidade do Minho.

Pinto, Manuel (1995) *A Televisão no Quotidiano das Crianças*. Tese de Doutoramento em Ciências da Comunicação (Ph.D. thesis), Braga: Instituto de Ciências Sociais, Universidade do Minho (forthcoming in book form)

Pinto, Manuel; Baleiras, Alda; Santos, António; Pereira, Sara (1993) *Escola e Comunicação Social- Desafios e Propostas de Acção*. Braga: CEFOPE, UM.

Ponte, Cristina (1994) *Programação e Produção Televisiva para Crianças.: um Estudo de Ofertas RTP 1957-1991*. Tese de Mestrado em Ciências da Comunicação (MA thesis), Lisbon, Faculdade de Ciências Sociais e Humanas, Universidade Nova.

Soares, António P. C. (1984) *Pre-adolescents preferences about heroes and plots in books and mass-media*. Boston University: School of Education

Vilhena, Maria da Conceição (1984) *A pilot study of a unit of television critical viewing for portuguese children*. Boston University: School of Education.

## IX. General Overview

### 9.1.

The developments concerning parental control depend on the political will to intervene in such a sensitive issue. However, due to the Portuguese historical legacy, politicians tend to stay away from overt intervention in this area. Still, if more detailed legislation is developed at EU level, it will make it easier for politicians to justify measures related to content without being accused of 'censorship'.

### 9.2.

a) If measures are taken at EU level, they will most probably be adopted in Portugal. This however, does not alter the fact that most parents and educators in Portugal do not seem to be particularly concerned with the issue.

b) Considering the level of fragmentation both in terms of legislation and regulatory bodies (please see point 5), it might be argued that an horizontal approach should be taken. Still, any attempt at this level will most probably unleash resistance from the existing regulatory bodies.

### 9.3.

Violence on television and pornography in the Internet are two subjects which occasionally come to the fore. The media talks about it and some opinion leaders discuss the issue in the public arena: some argue that the state should not intervene in any aspect related to control of content and others argue that minors should be protected and that the law should be implemented.

Apart from these occasional interventions, it cannot be said that this is understood as a serious social problem. Most people feel that it is up to parents to ensure that children do not have access to harmful content. It is not the state's responsibility.

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## **Newspapers**

Expresso

Público

## **Internet Sites**

[www.icp.pt](http://www.icp.pt)

[www.secs.pt](http://www.secs.pt)

## **Legislation**

Constitution of the Portuguese Republic

Penal Code

Civil Code

Law 1478, 16th of February 1925, defines the rules related to films to school children.

Decree 13564, 6th of May 1927, regulates cinema and theatre.

Decree 20859, 4th of February 1932, establishes the *Comissão do Cinema Educativo*.

Law 1974, 16th of February 1939, establishes directives related to minors viewing of public shows.

Law-decree 38964, 27th of October 1952, regulates minors assistance to public shows and the rating of these shows.

Law-decree 41051, 1st of April 1957, scales down previous constraints concerning minors in public shows.

Law-decree 263/71, 18th of June, defines classification rules and regulates the minors attendance to public shows.

Law-decree 396/82, 21st of September, first post-revolution legislation regulating the assistance to public shows

*Portaria* 245/83, 3rd of March, this *Portaria* emanated from the Ministério da Cultura e Coordenação Científica and defined general criteria for classification.

Law-decree 317/88, legislation concerning satellite reception equipment

Law 58/90, 7th of September, Television Act (general law concerning television activity)

Law-decree 292/91, 13th of August, regulates the cable sector

Law 10/91, regulates the collection and usage of personal data

Law 109/91, covers 'computing crimes' such as electronic sabotage and illegitimate access

Law-decree 34/97, 31th of January, sets up the *Instituto da Comunicação Social*

Law-decree 241/97, 18th of September, regulates the access and activity of cable television

Law-decree 80/98, 8th of April, sets up the *Inspecção-Geral das Actividades Culturais*.

Law 31-A/98, 14th of July, Television Act (revoked Law 58/90 and law 60/97)

Law 43/98, 6th of August, regulates the *Alta Autoridade para a Comunicação Social* (revokes law 15/90 and Law 30/94)